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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Realigning the 800 MHz Land)
Mobile Radio Band to Rectify)
Commercial Mobile Radio —)
Public Safety Interference and)
Allocate Additional Spectrum to)
Meet Critical Public Safety Needs)

To: Commissioners

*ex parte
WT Docket 02-55*

**Petition for Application of Section 1.405 Rule Making Procedures
to The Nextel White Paper and For Issuance of A Notice of Inquiry**

In the interest of promoting thoughtful consideration and comment on the "White Paper" filed with the Federal Communications Commission ("Commission") by Nextel Communications, Inc. ("Nextel"),¹ Daigneault Communications and the Licensing Assistance Office ("Petitioner") hereby petition the Commission, pursuant to §1.1 and §1.411 of the Commission's Rules and Regulations, to seek public input on the White Paper.

Petitioner believes the White Paper presents several intriguing considerations. Moreover, the White Paper serves a valuable function in attempting to focus Commission attention on the perplexing issue of interference from advanced Specialized Mobile Radio ("SMR") systems to 800 MHz Public Safety radio systems. Petitioner also notes that the White Paper is a comprehensive and far-reaching proposal that, if implemented, is likely to present ramifications that are monumental in scope. The White Paper examines some of these ramifications, but it does not address all of the engineering and financial considerations. Nor does it suggest possible alternatives to realignment that may be feasible.

In this document, Petitioner urges the Commission to seek meaningful public input on the White Paper through a two-step process: (1) by placing the White Paper on public notice in accordance with established FCC procedures governing Petitions for Rule Making; and (2) by issuing a Notice of Inquiry to address the questions and issues raised in the White Paper. The first measure, placing the White Paper on public notice, would serve to satisfy established FCC procedures pertaining to proposals for rule changes submitted by members of the public. The second measure, issuing a Notice of Inquiry, would allow the opportunity for valuable input on the many

¹ Nextel filed its White Paper with the Commission on November 21, 2001.

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significant ramifications of Nextel's proposal. A Notice of Inquiry would prove especially helpful in enabling the Commission to ferret out consequences and alternatives that the White Paper does not address. In this regard, Petitioner notes that the White Paper is the result of two years of dialogue and discussion between Nextel and representatives of the Public Safety community. However, to this point, there has been little opportunity for input from either Business and Industrial/Land Transportation licensees or the licensees of non-cellular SMR systems. As the Commission will readily recognize, the radio operations of these two sectors of the industry will be dramatically affected if the White Paper proposal is implemented.

Background

On November 21, 2001, Nextel Communications, Inc. ("Nextel") filed with the Commission a "White Paper" proposal to restructure the current 800 MHz land mobile radio frequency band. The stated purpose of the proposal is to implement measures that will help to resolve widespread cases of interference between Commercial Mobile Radio Service ("CMRS") systems and Public Safety systems. Nextel specifies that the Commission should attempt to incorporate the incorporate the realignment into its rules within the next six months.

In the instant pleading, Petitioner takes no position on the substance of the Nextel White Paper. Rather, Petitioner simply seeks to ensure that, in the process of evaluating the White Paper, the interests of all affected parties receive proper consideration.

Assumptions Underlying This Pleading

In submitting this pleading for the Commission's consideration, Petitioner is proceeding under six fundamental assumptions as follows:

1. To the extent possible, it is in the public interest to remedy harmful interference caused to Public Safety systems, whatever the source of the interference.
2. The appropriate remedy for harmful interference caused to Public Safety systems should be determined on the basis of a sophisticated analysis of the degree of interference experienced.
3. Anecdotal accounts of specific interference cases may provide a valid indicator of the existence of a problem but do not provide a useful basis for assessing the extent or scope of the problem.
4. The Commission should attempt to ascertain the extent to which the anecdotal evidence provided by Nextel reflects a problem that affects all areas of the country, both urban and rural.
5. To avoid creating additional problems when attempting to resolve CMRS—Public Safety interference cases, the Commission must carefully assess the consequences, both positive and negative, of the proposed solution.
6. If the Notice of Inquiry process produces evidence which establishes that the proposed realignment is in the public interest, the Commission should proceed to implement the proposal in an expeditious manner consistent with the statutorily mandated notice and

comment rulemaking procedures.

Procedural Considerations

As an initial matter, Petitioner notes that the White Paper is analogous to a Petition for Rule Making and that there are certain advantages in treating it as such. In comparison to a Petition for Rule Making, a White Paper is more amorphous in structure and ambiguous in its implications. The term "white paper," at least in its original meaning, referred specifically to an informative government report issued on a matter which had received official investigation. To the extent that Nextel's White Paper originated from a source outside the government, it would perhaps be better labeled with an alternative title. More importantly, Petitioner is concerned that the characterization of the proposal as a White Paper may cause it to be legally infirm. As the Commission is aware, the Part 1 rules do not specifically provide a framework for Commission consideration of a white paper. The lack of a regulatory framework for evaluation of white papers means that the Commission will have to craft the applicable procedures as it goes along. From the Petitioner's perspective, it would seem to be more efficient—and provide for a greater degree of certainty in the rulemaking process—if the Commission were simply to treat the White Paper as a petition for rulemaking under §1.401. In this vein, Petitioner poses the following questions:

1. Is it in the public interest for the Commission to proceed without reliance on the petition for rulemaking procedures detailed in §1.401 through §1.407 of the Commission's rules?
2. If so, what safeguards will the Commission implement to ensure that the information customarily gleaned from the public comment procedure provided for in §1.405 will be collected?
3. If the Commission is to proceed without the benefit of the petition for rulemaking procedures detailed in §1.401 through §1.407, is there an adequate legal foundation for doing so?

Timeframe for Implementation of Rules Governing Possible Realignment

The White Paper posits a six-month period as the appropriate timeframe for completion of the rulemaking process required to implement the proposed realignment. It is not clear, however, that such a hasty implementation would serve the public interest. The Petitioner proposes the following questions for study:

1. Is it imperative for the Commission to adhere to a six-month implementation period for adoption of the rule changes that Nextel believes to be necessary for resolving the Public Safety interference dilemma?
2. Would the proposed six-month implementation allow adequate time for a complete examination of the impact of the proposal on all affected parties?

3. If a six-month resolution is deemed essential, are there alternatives to realignment that might be more compatible with such a compressed implementation schedule?

Scope of the Realignment Necessary to Resolve the Interference

The White Paper references several instances of interference to public safety systems. Most of the interference cases cited occurred in urban areas. The Petitioner believes it would be instructive to receive comments on whether the problem is confined chiefly to urban areas or, alternatively, also affects the use of frequencies in rural areas. Specifically, the Petitioner believes the Commission should pose questions in its Notice of Inquiry aimed at assessing the need, if any, to restructure the current frequency allocations throughout the entire country, including rural areas. The Petitioner proposes the following questions for study:

A. Interference Experienced in Metropolitan Areas

1. What is the best mechanism for analyzing the scope of the interference problem in metropolitan areas?
2. From an analytical perspective, is the problem documented in the White Paper sufficiently severe to: (a) dispense with the current remedy of addressing interference situations on a case-by-case basis, and (b) warrant implementation of a more comprehensive resolution, such as realignment of the frequencies in all areas of the country?

B. Interference in Rural Areas

1. To what extent do the interference situations documented in the White Paper also affect Public Safety licensees in rural areas?
2. If similar interference situations have occurred in rural areas, with what regularity have they occurred?
3. Have the procedures described in the "Best Practices Guide" (*White Paper*, page 18) been applied to interference situations in rural areas and, if so, what level of success has been achieved in resolving the interference?
4. Is the level of interference experienced in rural areas sufficient to warrant realignment of the 800 MHz spectrum in these areas?
5. To what extent, if any, has Nextel taken into consideration the Business, Industrial/Land Transportation, and non-cellular SMR systems operating in rural areas?
6. If it proves necessary to relocate Business, Industrial/Land Transportation, and non-cellular SMR systems operating in rural areas to other frequencies, how will this be accomplished?

and will these licensees be able to implement alternative systems that are effective and justifiable from a cost standpoint?

Examination of Alternatives to the Proposal Presented in the White Paper

There is no indication in the White Paper that Nextel has examined other alternatives to the proposed realignment. For a thorough evaluation of the public interest impact of the proposal, it would be helpful for both the Commission and the public to have information on other alternatives that may have been examined and ruled out. The Petitioner believes the following questions are pertinent:

1. Has Nextel explored possible alternatives to realignment and, if so, what conclusions did it reach regarding these alternatives?
2. Does Nextel's equipment and infrastructure limit it to use of one block of frequencies at 800 MHz only or could Nextel's needs be satisfied with two contiguous blocks, with the second block to consist of the 150 General Category channels?
3. Could the interference problem highlighted in the White Paper be resolved, in part or in whole, by allocating frequencies from among the channels currently allocated for UHF and VHF broadcast television?
4. Are there technological and/or software developments on the horizon that may provide a solution to the Public Safety interference issue without the need for frequency realignment?

Cost of Implementation

There has been no record developed of the probable cost to implement the proposed realignment. Nextel has indicated that it would be willing to make a "substantial contribution," up to \$500 million, to relocate incumbent public safety systems to new frequencies (*White Paper*, page 42). However, the White Paper does not attempt to provide any estimate of the ultimate cost of relocation to the Public Safety community. Additionally, Nextel's stated intention is to refrain from contributing to the relocation of affected Business, Industrial/Land Transportation, and non-cellular SMR systems. The cost of relocating these users is unknown. The Petitioner believes a useful record must be developed on the cost factors involved. Specifically, the Petitioner urges the Commission to seek comment on the following matters:

A. Cost to Public Safety Licensees

1. Is it necessary to relocate all Public Safety systems *en masse*?
2. What is the estimated cost of relocating Public Safety systems?

3. What measures will be taken to ensure that neither the direct cost of relocating Public Safety systems nor peripheral costs will have to be borne by local communities?
4. What mechanism will be used to channel funds from Nextel to Public Safety licensees?
5. Will the FCC have a role in overseeing the transfer of funds from Nextel to Public Safety systems and, if so, how will that responsibility be exercised?
6. How can disagreements between Nextel and Public Safety licensees as to the cost of relocation best be resolved?

B. Costs to Business, Industrial/Land Transportation, and Non-cellular SMR Licensees

1. What proportion of the incumbent Business, Industrial/Land Transportation, and non-cellular SMR systems would choose to relocate to replacement spectrum rather than accept secondary, non-interference status?
2. What would be the cost of a wholesale relocation of incumbent Business, Industrial/Land Transportation, and non-cellular SMR systems to replacement spectrum?
3. Do cellular and advanced 800 MHz mobile communications providers have an obligation to pay any or all of the costs of relocation incurred by incumbent Business, Industrial/Land Transportation, and non-cellular SMR systems?
4. In the event that Business, Industrial/Land Transportation, and non-cellular SMR licensees are compelled to accept secondary status, are these licensees entitled to any monetary or other compensation for their diminution in status?
5. If cellular and advanced 800 MHz mobile communications providers will not be obligated to pay any or all of the costs of relocation incurred by small Business, Industrial/Land Transportation and non-cellular SMR systems, will the licensees of these systems be able to continue to function as viable businesses?
6. In the absense of compensation for the costs of relocation, what measures will be necessary to ensure that critical private systems will be able to afford the costs of continuing to provide vital services to the public, both in urban and rural areas?

Operational Impact

The White Paper is premised on assigning the 821-824 MHz and 866-869 MHz bands now allocated for Public Safety systems to Nextel. The White Paper also anticipates that a portion of the incumbent 800 MHz licensees will have to move from their existing assignments to frequencies currently licensed to Nextel in the 700 MHz and 900 MHz bands. The incumbents identified by

Nextel as candidates for relocation include Business and Industrial/Land Transportation licensees and high-site (non-cellular) SMR licensees. The White Paper recommends that the Commission create incentives for these licensees to relocate expeditiously to vacant 700 MHz or 900 MHz channels (*White Paper*, page 9). The Petitioner believes the following questions are relevant:

A. Impact Upon Public Safety Licensees

1. What is the impact of the proposed reallocation on existing Public Safety users?
2. What level of funds have been expended by Public Safety users in the effort to establish systems at 821-824 MHz and 866-869 MHz?
3. Will the monies expended for planning Public Safety systems in the 821-824 MHz and 866-869 MHz be reimbursed?
4. What period of time will affected Public Safety entities require to conform their systems to the frequency alignment proposed in the White Paper?
5. What will be the likely state of land mobile telecommunications technology when affected Public Safety entities are poised to convert their systems to the realigned frequencies, and what impact will the state-of-the-art technology then available exert on the proposed realignment?

B. Impact Upon Business, Industrial/Land Transportation and Non-Cellular SMR Licensees

1. How many existing 800 MHz licensees will have to relocate to other frequencies?
2. In the context of the proposed realignment, what incentives would be necessary to induce Business and Industrial/Land Transportation licensees and non-cellular SMR licensees to relocate to 700 MHz or 900 MHz?
3. Will the 700 MHz or 900 MHz channels serve as adequate replacement spectrum for the affected licensees or should the Commission endeavor to reallocate other frequency bands that might more easily accommodate the systems to be relocated?
4. Would moving Business, Industrial/Land Transportation and non-cellular SMRs to the blocks of frequencies at 821-824/866-869 MHz be less disruptive to existing operations and, therefore, more suitable for realignment?
5. What period of time will affected Business, Industrial/Land Transportation and non-cellular SMRs require to conform their systems to the frequency alignment proposed in the White Paper?

6. What will be the likely state of land mobile telecommunications technology when affected Business, Industrial/Land Transportation and non-cellular SMR licensees are poised to convert their systems to the realigned frequencies and what impact will the state-of-the-art technology then available exert on the proposed realignment?

Secondary Status for Industrial/Business Licensees

The White Paper proposes that Industrial/Business licensees would be permitted to continue using their licensed frequencies, albeit on a secondary, non-interference basis. From an operational standpoint, however, secondary status does not always ensure a workable solution to interference cases. The Commission should give some consideration to the approach to be used in analyzing cases of suspected interference from a secondary licensee to either Public Safety users or CMRS licensees. The Petitioner proposes the following questions:

1. What procedures and standards will be used to identify the source of interference?
2. What threshold level of interference will be sufficient to require an Industrial/Business licensee to cease operating?
3. What recourse will be available to Industrial/Business licensees who dispute the evidence of harmful interference?

Suitability of the Proposed Replacement Bands

The White Paper is premised on Industrial/Business licensees being successfully able to relocate to either the 700 MHz or 900 MHz frequency bands. It is not clear that either band will provide an acceptable substitute for their existing 800 MHz systems. Petitioner believes the Commission should investigate the suitability of the replacement bands identified in the White Paper. Specifically, Petitioner suggests the following questions for the Commission's inquiry:

1. What is the availability of equipment in the replacement bands?
2. Is the available equipment satisfactory to accommodate the needs of displaced Business and Industrial/Land Transportation licensees and non-cellular SMR licensees?
3. Are equipment costs in the replacement bands comparable to the equipment costs in the 800 MHz band?
4. Are there operational or environmental reasons why it may not be feasible for Business and Industrial/Land Transportation licensees and non-cellular SMR licensees to relocate to the replacement bands identified in the White Paper?

Homeland Security Policy Council Considerations

The proposals contained in the White Paper may well be a good first step toward solving some of the concerns that motivated the Commission to create the Homeland Security Policy Council. The White Paper states that the realignment proposal will address the critical needs of public safety community that the Council was designed to promote (*White Paper*, page 7). Petitioner urges the Commission to recognize, however, that homeland security is not simply a problem of allocating additional spectrum for Public Safety users but rather entails a comprehensive solution for the difficulties that Public Safety licensees have encountered. In this vein, the Petitioner proposes the following questions:

1. Are there other homeland security issues that the Commission should address in connection with the instant realignment proceeding?
2. Is the White Paper proposal compatible with satisfactory resolution of these other homeland security issues?

Conclusion

The Petitioner believes that Nextel's White Paper proposal is both innovative and provocative. At the same time, the proposal engenders a wide range of difficult questions. Ultimately, it is the Commission's responsibility to ensure that, on balance, the anticipated benefits of the proposed realignment outweigh the costs, both financial and operational, that will be imposed. The Petitioner urges the Commission to take all necessary precautions to ensure that all affected parties have an adequate opportunity to provide reasoned input on the proposal.

In particular, the public interest would be well-served by a careful and comprehensive inquiry into the ramifications of the proposed realignment. The Petitioner believes the Commission could establish a very useful foundation for this inquiry by placing the White Paper on public notice in accordance with the Petition for Rulemaking procedures set forth in §§ 1.401 through 1.407 of the Commission's rules. Compliance with these procedures would ensure full and meaningful participation by the land mobile user community in the evaluation of Nextel's proposal.

The Petitioner believes that, before the Commission considers possible action on the White Paper, it will be necessary to address the myriad of questions that the proposal engenders. In the Petitioner's view, the most advantageous mechanism for fostering a useful discussion of the White Paper proposal among all affected segments of the industry is through public dissemination of a Notice of Inquiry that focuses attention on the questions recited above and other relevant issues.

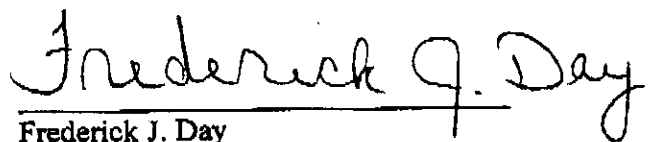
Wherefore, the premises considered, Daigneault Communications and the Licensing Assistance Office urge the Federal Communications Commission to expeditiously: (1) place the White Paper filed by Nextel Communications, Inc. on public notice as a petition for rule making, and (2) issue a Notice of Inquiry designed to elicit the information necessary to allow the Commission

to fully evaluate the White Paper proposal and determine if the issues addressed in the White Paper provide an appropriate basis on which to commence a Notice of Proposed Rulemaking proceeding.

Respectfully submitted,

Daigneault Communications and the Licensing
Assistance Office

BY ITS ATTORNEYS:

A handwritten signature in cursive script that reads "Frederick J. Day". The signature is written in dark ink and is positioned above a horizontal line.

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